

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
TV 45 Productions, Inc.	)	File No. EB-02-SD-033
	)	
Licensee, KLHU-CA	)	NAL/Acct. No. 200232940003
Lake Havasu City, Arizona	)	
	)	FRN 0004-0823-76

## **FORFEITURE ORDER**

**Adopted: June 17, 2002****Released: June 19, 2002**

By the Chief, Enforcement Bureau:

### **I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to TV 45 Productions, Inc. (“TV 45”), licensee of Class A television station KLHU-CA, for willful and repeated violation of Sections 11.35(a) and 11.61 of the Commission’s Rules (“*Rules*”).<sup>1</sup> The noted violations involve TV 45’s failure to ensure that Emergency Alert System (“EAS”) equipment is installed and operational and its failure to conduct required weekly and monthly tests of the EAS.

2. On March 13, 2002, the Commission’s San Diego, California, Field Office (“San Diego Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to TV 45 for a forfeiture in the amount of eight thousand dollars (\$8,000).<sup>2</sup> TV 45 filed a response to the *NAL* on April 1, 2002.

### **II. BACKGROUND**

3. On January 30, 2002, an agent from the San Diego Office inspected KLHU-CA. During the inspection, the agent found that TV 45 did not have any EAS equipment installed. Because there was no EAS equipment installed, the station was unable to monitor EAS transmissions from designated sources, originate EAS transmissions or retransmit EAS transmissions or required tests. The owner of the station, James W. Husted, advised the agent that KLHU-CA had only recently become a Class A television station and that it had purchased but had not yet installed the EAS equipment. Mr. Husted also showed the agent that KLHU-CA had the EAS unit on hand at the station. Upon returning to the San Diego Office, the agent checked the FCC database and found that KLHU-CA had been granted Class A television status on February 6, 2001, approximately one year prior to the inspection.

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<sup>1</sup> 47 C.F.R. §§ 11.35(a) and 11.61.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232940003 (Enf. Bur., San Diego Office, released March 13, 2002).

4. On March 13, 2002, the San Diego Office issued an *NAL* for a forfeiture in the amount of \$8,000 to TV 45 for failure to ensure that EAS equipment is installed and operational in willful and repeated violation of Section 11.35(a) and failure to conduct required weekly and monthly EAS tests in willful and repeated violation of Section 11.61.<sup>3</sup> TV 45 submitted a response to the *NAL* on April 1, 2002. In its response, TV 45 admits that the violations occurred, but nevertheless presents several arguments for rescission or reduction of the proposed forfeiture. First, TV 45 states that the EAS equipment was not hooked up at the time of the inspection because KLHU-CA is located in a remote community, where it is difficult to get engineering assistance. TV 45 states that it had contracted with a contract engineer to install the EAS equipment and repeatedly asked him to finish the job, but the contract engineer assured TV 45 that the equipment did not have to be installed immediately. TV 45 also provides a statement from the contract engineer, who maintains that he is the only broadcast engineer within 150 miles of KLHU-CA and that he simply had not worked installation of KLHU-CA's EAS equipment into his busy schedule. Additionally, TV 45 asserts that it has a record of compliance with the FCC rules. Finally, TV 45 argues that KLHU-CA is a small station with little revenue and no profits and that payment of the forfeiture would result in a serious financial hardship for the station. In support of this argument, TV 45 provides copies of its tax returns for 1999, 2000 and 2001.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining TV 45's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

6. Section 11.35(a) of the Rules requires broadcast stations, including Class A television stations, to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times when the station is in operation. Section 11.61 of the Rules requires broadcast stations to conduct weekly and monthly tests of the EAS. TV 45 admits that it did not have EAS equipment installed at KLHU-CA from the time that KLHU-CA received Class A television status until the time of the inspection. Accordingly, we find that TV 45 willfully and repeatedly violated Sections 11.35(a) and 11.61 of the Rules.

7. TV 45 asserts that KLHU-CA is located in a remote community where it is difficult to get engineering assistance and that, despite repeated requests, its contract engineer had not yet installed the EAS equipment due to his busy schedule. However, as TV 45 acknowledges in its response to the *NAL*,

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<sup>3</sup> Although the *NAL* cited TV 45 for violations of both Section 11.35(a) and Section 11.61, it only proposed an \$8,000 forfeiture, the base forfeiture amount for failure to install EAS equipment. The *NAL* did not propose a separate forfeiture for TV 45's failure to conduct required weekly and monthly EAS tests.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

licensees are responsible for the acts and omissions of their independent contractors. *See Netcom Technologies, Inc.*, 16 FCC Rcd 9524, 9526 (Enf. Bur. 2001); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972). Thus, we do not think that these facts warrant mitigation of the forfeiture amount, particularly given that almost a full year lapsed between the time that KLHU-CA received Class A television status, and therefore was required to install EAS equipment, and the time of the inspection.

8. TV 45 also asserts that its record of compliance with the Commission's rules warrants mitigation of the forfeiture. However, the Commission has considered the duration of a violation in considering whether a licensee has a history of overall compliance. *See Commercial Radio Service Corp.*, 16 FCC Rcd 3543, 3545 (Enf. Bur., Tech. & Pub. Safety Div., 2001) (denying a reduction for a history of overall compliance where the licensee operated eleven specialized mobile radio stations without authorization for five months). In light of the fact KLHU-CA operated without EAS equipment for approximately one year after it received Class A television status, we do not believe that TV 45 has a history of overall compliance with the Commission's rules for this station and therefore find that no reduction of the forfeiture based on this factor is warranted.

9. Finally, TV 45 argues that KLHU-CA is a small station with little revenue and no profits and that payment of the forfeiture would result in a serious financial hardship for the station. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992). After reviewing the financial documentation submitted by TV 45, we conclude that it is appropriate to reduce the forfeiture amount from \$8,000 to \$4,000.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>7</sup> TV 45 Productions, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for failure to ensure that EAS equipment was installed and operational in willful and repeated violation of Section 11.35(a) of the Rules and failure to conduct required weekly and monthly EAS tests in willful and repeated violation of Section 11.61 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>8</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232940003 and FRN 0004-0823-76. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

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<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>8</sup> 47 U.S.C. § 504(a).

<sup>9</sup> *See* 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to TV 45 Productions, Inc., 1600 W. Acoma Blvd., Suite 36, Lake Havasu City, Arizona 86403, and to its counsel, Peter Tannenwald, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036-3101.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau